IN THE

United States Supreme Court.

In the Matter

of

The Petition of WILLIAM M. BARRETT, as President of the Adams Express Company,

Petitioner,

—against—

ARTHUR H. VAN PELT,

Respondent,

for a Writ of Certiorari to the Appellate Division of the Supreme Court of the State of New York for the First Department, to bring before the Supreme Court the case of ARTHUR H. VAN PELT,

Plaintiff-Respondent,

—against—

WILLIAM M. BARRETT, as President of the Adams Express Company,

Defendant-Appellant.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION.

It has been called to our attention that paragraph four of the petition for a writ of certiorari, which sets forth in full the provisions of Section VII of the Uniform Express Receipt, as contained in the published and filed schedules and tariffs in effect on February 23, 1918, does not cite the

page of the record from which it is derived. This excerpt is not taken from the record, but directly from the Uniform Express Receipt provided for on page 6 of the Official Express Classification No. 25 issued May 15, 1917, effective July 1, 1917, filed with the Interstate Commerce Commission under its number I. C. C. A-2130, which was effective up to July 1, 1918. This was filed with the Interstate Commerce Commission on May 18, 1917.

These were not formally introduced in evidence because the Trial Court took judicial cognizance of them under the authority of *United States* v. *Wells Fargo & Co.*, 271 Fed. 180, 183, no objection being made thereto by the plaintiff's counsel.

Thereafter the Appellate Division took judicial notice of said provisions of the Uniform Express Receipt contained in such schedules and tariffs, as set forth in the appellant's brief before that Court, without objection by the plaintiff's counsel.

Since this Court has repeatedly held that the provisions of the duly filed tariffs and schedules have the effect of law and are binding alike on the shipper and carrier, there seems to be no room for argument but that it was proper for the Trial Court to take judicial notice of their provisions.

United States v. *Wells Fargo & Co.*, *supra*;

American Railway Express Co. v. *Lindenburgh*, 67 Law. Ed. 227;

Boston & Maine v. *Hooker*, 233 U. S. 97;

Southern Railroad v. *Prescott*, 240 U. S. 632.

This is especially so where no objection has been made by counsel on either side to the Court's taking judicial notice of such facts.

Morgan's Louisiana, etc., SS. Co. v. *Isaac Joseph Iron Co.*, 243 Fed. 149, 156 CCA 15.

Neither the intentional nor accidental mis-statements of the applicable rate are binding on the carrier or shipper.

Kansas City Southern R. R. Co. v. *Carl*, 227 U. S. 639.

The rate, when made out and filed, is notice to everyone and this is not affected by the fact that it is not actually posted in the carrier's station.

Texas & Pacific Railroad v. *Mugg*, 202 U. S. 242;

Chicago & Alton Railroad v. *Kirby*, 225 U. S. 155.

To hold otherwise would, as a practical matter, result in permitting the plaintiff to secure the benefits of effecting a shipment upon more favorable terms than those prescribed by the Interstate Commerce Law for all other shippers under the Uniform Express Receipt.

Respectfully submitted,

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